

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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YURMAN STUDIO, INC. and YURMAN
DESIGN, INC.,

Plaintiffs/Counter-Defendants,

- against -

ELENA CASTANEDA and EJEWELER LLC
d/b/a OVERSTOCKJEWELER.COM,

Defendants/Counter-Plaintiffs.
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Civil Action No. 07-1241 (SAS)(HP)
(Action No. 1)

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CARTIER, a division of RICHEMONT NORTH
AMERICA, INC., CARTIER INTERNATIONAL,
N.V., CARTIER CREATION STUDIO, S.A., VAN
CLEEF & ARPELS S.A., VAN CLEEF &
ARPELS, INC., VAN CLEEF & ARPELS
DISTRIBUTION, INC., GUCCI AMERICA, INC.,
and BULGARI S.p.A.,

Plaintiffs,

- against -

ELENA CASTANEDA and EJEWELER LLC
d/b/a OVERSTOCKJEWELER.COM,

Defendants.
----- X

Civil Action No. 07-7862 (SAS)(HP)
(Action No. 2)

**DECLARATION OF JONATHAN MOSS, ESQ. IN SUPPORT OF
GUCCI AMERICA, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

JONATHAN MOSS, pursuant to 28 U.S.C. §1746, declares under penalty of perjury that
the following is true and correct to the best of his knowledge:

1. I am the General Counsel of Gucci America, Inc. ("Gucci"). I make this
declaration in support of Gucci's motion for partial summary judgment.

THE GUCCI BUSINESS AND THE WORLD FAMOUS GUCCI BRAND

2. Gucci is a New York corporation and maintains its principal place of business at 685 Fifth Avenue, New York, New York.

3. Gucci is the owner of, and the sole and exclusive distributor of, fine jewelry and luxury watches sold under the world famous GUCCI brand name in the United States.

4. The GUCCI brand name has been synonymous with luxurious and elegant products and services, and currently the Gucci trademark is one of the most recognized trademarks in the world.

5. Moreover, the brand owners of the GUCCI brand have long been recognized as worldwide leaders in the design, marketing and distribution of premium, high quality products, including fine jewelry and luxury watches.

GUCCI'S VALUABLE INTELLECTUAL PROPERTY


6. Gucci diligently protects and enforces its most important assets, its intellectual property rights. Over the years, Gucci has registered copyrights in its unique and innovative jewelry and watch designs in the United States Copyright Office. Gucci has also registered in the United States Patent and Trademark Office ("USPTO") numerous trademarks for the GUCCI brand name, as well as various collection names and design marks used to identify the jewelry and watch designs that Gucci markets and sells.

7. Specifically, Gucci has registered the following collections of unique, innovative and well-known jewelry designs with the United States Copyright Office:

Copyright Reg. No.	Title of Work	Date of Registration	Date of First Publication	Registered Owner
VA 1-375-802	Fall Winter 2005 Jewelry Collection	February 7, 2006	August 15, 2005	Gucci America, Inc.
VA 1-395-947	Spring Summer 2007 Jewelry Collection	January 29, 2007	December 1, 2006	Gucci America, Inc.

Certified copies of the foregoing copyright registrations (collectively, the “Gucci Copyrighted Designs”) are attached hereto as Exhibit A.

8. In addition, Gucci also owns, and has registered, the following stylized letter G design, which Gucci has continuously used in commerce since 1999, as a trademark with the USPTO (the “Gucci Design Mark”):

U.S. Trademark Reg. No.	Mark	Type & Class of Goods	Date of Registration	Registered Owner
2,234,272		Watches and clocks (14)	March 23, 1999	Gucci America, Inc.

OVERSTOCK JEWELER’S INFRINGING CONDUCT

9. Overstock Jeweler has been offering for sale and selling jewelry and watch products that deliberately and slavishly copy and infringe the Gucci Copyrighted Designs and the Gucci Design Mark through its web site — www.overstockjeweler.com.

10. When Gucci commenced this infringement action against Overstock Jeweler in September 2007, Overstock Jeweler was offering for sale and selling approximately 40 Gucci knockoff jewelry and watch products, which blatantly infringe Gucci’s various intellectual property rights. Remarkably, despite the commencement of this action, the number of Gucci knockoff jewelry and watch products offered through the www.overstockjeweler.com web site has grown to approximately 47 today.

11. Overall, Gucci has identified twelve jewelry and watch products being sold by Overstock Jeweler that have been obviously (and concededly, according to Overstock Jeweler’s own product descriptions) copied from, and are substantially similar in overall appearance to the respective Gucci Copyrighted Designs. Indeed, each of these Overstock Jeweler products

embody the unique and innovative combination of design elements that set the Gucci Copyrighted Designs apart as unique and original jewelry designs.

12. A chart comparing of the Gucci Copyrighted Designs and the jewelry and watch products being offered for sale and sold by Overstock Jeweler makes clear that the Overstock Jeweler products have been slavishly copied from, and capture the total concept and feel of the Gucci Copyrighted Designs.

13. Annexed hereto as Exhibits B - I are images of the deposit material of each of the individual Gucci Copyrighted Designs, copies of printouts from www.overstockjeweler.com, which depict each corresponding Overstock Jeweler jewelry and/or watch product that Gucci alleges infringes the Gucci Copyrighted Designs, and a side-by-side comparison of the Gucci Copyrighted Design and the allegedly infringing Overstock Jeweler product.

14. In addition, Gucci has also identified a bracelet being offered for sale and sold by Overstock Jeweler that incorporates a design that is substantially indistinguishable from the Gucci Design Mark.

15. Annexed hereto as Exhibit J is a certified copy of the trademark registration for the Gucci Design Mark, a copy of a printout from www.overstockjeweler.com, which depicts the corresponding Overstock Jeweler jewelry product that infringes the Gucci Design Mark, and a chart comparing of the Gucci Design Mark and the allegedly infringing Overstock Jeweler product.

16. Any attempt by Overstock Jeweler to argue that the products being offered for sale and sold through its web site were not copied from, and were intended to be substantially indistinguishable from the designs covered by the Gucci Copyrighted Designs and the Gucci Design Mark, is belied by the manner in which Overstock Jeweler markets and promotes these

products — namely, as being indistinguishable from and of comparable quality to the genuine Gucci Copyrighted Designs and products bearing the Gucci Design Mark. In reality, nothing could be further from the truth.

17. By way of example only, Overstock Jeweler markets and promotes a bracelet (Item No. PK-3S-656-ASH) that Gucci alleges infringes its copyright for a unique and innovative bracelet design that is part of its Fall Winter 2005 Jewelry Collection (VA 1-375-802). Overstock Jeweler refers to Item No. PK-3S-656-ASH as a “Gucci-Esque Pave CZ Accented Horsebit Sterling Silver Bracelet” — the Gucci Horsebit design being a world famous design element that appears across all types of Gucci products, including fine jewelry and watches. Moreover, in its description of the product, Overstock Jeweler touts the fact third-parties will be confused into thinking that the purchaser is wearing a genuine Gucci jewelry or watch product — “Glamour comes to mind when wearing this piece similar to a Gucci imitation, so spend less and still stand out in the crowd. . . . True designers look at a fraction of the price” *See Exhibit C.*

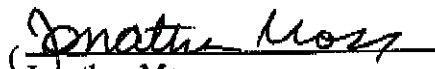
18. It is no coincidence that Overstock Jeweler has decided to copy jewelry items from Gucci’s jewelry collections which incorporate Gucci’s famed Horsebit and stylized G designs, as these are some of our most popular and successful designs. Overstock Jeweler wants to hide behind the fact that it describes these items as “Inspired by Gucci” and “Gucci-esque”. However, while doing so, time and again, it unwittingly admits copying these famous designs, which are protected in their own right.

19. As is clear from the above example, Overstock Jeweler exists solely to profit from Gucci’s and other internationally recognized jewelry and watch designs. Accordingly, there can

be no doubt that Overstock Jeweler is purposefully and willfully infringing the Gucci Copyrighted Designs and the Gucci Design Mark.

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DECLARED UNDER PENALTY OF PERJURY THIS ____ DAY OF June, 2008.


Jonathan Moss